Supreme Court, U. S.
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No. 80-932

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

SOUTHERN PACIFIC TRANSPORTATION COMPANY,
a corporation,
Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA,
Appellee,

CITY OF SALINAS,
Real Party in Interest.

MOTION TO DISMISS OR AFFIRM

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QUESTION PRESENTED

Southern Pacific, having failed to impress the California Supreme Court with the merit of its appeal below, now presses the instant appeal, contending that the summary denial of its petition for writ of review by the state court was arbitrary and a denial of due process of law as secured by Section 1 of the Fourteenth Amendment to the United States Constitution.

The Commission hereby challenges Southern Pacific's assertion of jurisdiction for the reasons stated herein.

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MOTION TO DISMISS OR AFFIRM

The Appellee (hereinafter, the Commission) moves the Court to dismiss the appeal herein, or, in the alternative, to affirm the judgment of the Supreme Court of the State of California, on the grounds that that judgment is based upon adequate state grounds and that the appeal does not present a substantial federal question.

I

OPINIONS BELOW

The opinions below are correctly stated in Appellant's (hereinafter, Southern Pacific) Jurisdictional Statement.[1]

II

JURISDICTION

Jurisdiction is asserted by Southern Pacific under Title 28, United States Code § 1257(2). (Jur. St. 4.)

III

ARGUMENT

A. The Decisions Below Rest Upon An Adequate Non-Federal Basis

It is important to note that the Commission decisions at bar involved rights and procedures created by state statutes, viz., Public Utilities Code Sections 1201, et seq. (See Appendices B and C.) The interpretation and operation of those statutes is the exclusive responsibility of the California courts and this Commission. *Speiser v. Randall,* 357 U.S. 513, 523 n.7 (1957), *rehearing denied*, 358 U.S. 860 (1958); *Quong Ham Wah Co. v. Industrial Accident Commission,* 255 U.S. 445, 448 (1921); also, *Greyhound Lines, Inc. v. Public Utilities Commission,* 68 Cal.2d 406 (1968). The denial of review by the state supreme court fully affirms that the Commission's interpretations of the dispositive provisions of the Public Utilities Code were

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[1]References herein to appendices are to those attached to the Jurisdictional Statement. "Jur. St." followed by a number refers to pages of the text of the Jurisdictional Statement.

proper in light of state law. *People v. Western Airlines, Inc.*, 42 Cal.2d 621, 630-631 (1954).

B. The Denial Of Southern Pacific's Petition For Writ Of Review By The Supreme Court Of The State Of California Does Not Raise Any Federal Question

Southern Pacific bases and focuses the instant action upon the refusal of the state court to hear its appeal below. That refusal, it is alleged, deprived Southern Pacific of its rights to due process of law as secured by Section One of the Fourteenth Amendment to the United States Constitution. Such an allegation raises only a frivolous federal question and should accordingly be dismissed. *Quong Ham Wah Co., supra* at 448.

Southern Pacific concedes that the California Supreme Court need not grant review in every case emanating from the orders of the Commission. (Jur. St. 28-39.) However, argues Southern Pacific, the state court *must* grant review whenever the Commission "has clearly failed to comply with statutory requirements" (Jur. St. 29); failure to do so, continues Southern Pacific, renders judicial review of Commission decisions meaningless and, consequently, a violation of due process.

Reduced to their basic element, Southern Pacific's contentions constitute nothing more than a disagreement with the California Supreme Court as to the merit of the petition Southern Pacific presented to that court below. Southern Pacific fails to heed the clear message of the minute order set forth in Appendix A, viz., that its petition failed to set forth sufficient grounds for the granting of

review. Implicit in that message is the finding that the Commission's orders there challenged were in compliance with apposite state statutes and regulatory law.[2] *Western Airlines, supra; Consumers Lobby Against Monopolies v. Public Utilities Commission,* 25 Cal.3d 891, 901 (1979).[3] Southern Pacific now appears before this Court having been unable to persuade the tribunals below that its claims are compelling or its cause just; however, the fact that a litigant has suffered the frustrations of defeat hardly proves a deprivation of constitutional rights or the caprice of the tribunal whose decision has adversely affected the litigant. See *Napa Valley Electric Co. v. Railroad Commission,* 251 U.S. 367, 372-373 (1920); *Southern California Edison Co. v. Railroad Commission,* 6 Cal.2d 737 (1936).

Nor does the *Consumers Lobby* opinion, of which Southern Pacific vehemently disapproves, give rise to any cause of action sounding in federal constitutional law. Southern Pacific's contention that *Consumers Lobby* cheats litigants of due process and adequate judicial review is the product of a failure to understand the holding which it now attacks.

Consumers Lobby did not significantly alter the nature of the review process described at Sections 1756, et seq. of the Public Utilities Code. The court's holding in that case continued the longstanding rule that denials of petitions for writ of review are to be deemed a decision on the merits.

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[2]See Argument "A", *supra.*

[3]Inasmuch as none of the procedural defects discussed in the *Consumers Lobby* opinion, 25 Cal.3d at 902-905, are pertinent to the instant case, denial of Southern Pacific's petition could only have been for want of substantive merit.

Consumers Lobby, supra, at 901. Contrary to the arguments of Southern Pacific, review does not fail adequacy or meaning simply because the court has ruled that no *stare decisis* effect attaches to a denial of a writ of review; that third parties, some of whom may be as yet unborn, suffer no ill effect from the denial does not constitute any constitutional defect. As the state court stated, its decision may have the effect of encouraging petitions for review:

> "[M]embers of the public who have potentially meritorious petitions for review to present to this court [might otherwise] be dissuaded from doing so by the mere fact that we declined to take an earlier case allegedly raising the same question." *Id.,* at 905.

The power to determine the effect which a court's rulings shall have clearly rests within the sound discretion of the court rendering that ruling. *Consumers Lobby* is consistent with the apposite statutory and constitutional principles of judicial review. Southern Pacific's plea for consideration of the "no *stare decisis*" rule is without legal basis and should be denied.

IV

CONCLUSION

Southern Pacific fails to raise any issue not adequately decided below on state grounds or presenting a substantial federal question. Wherefore, the Commission respectfully submits that the instant appeal should be dismissed or, alternatively, the judgment below should be affirmed.

Dated: January 8, 1981
San Francisco, California

Respectfully submitted,

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